

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK**

**ENGINEERS JOINT WELFARE, PENSION,
SUPPLEMENTAL UNEMPLOYMENT
BENEFIT AND TRAINING FUNDS**, *by Daniel
P. Harrigan, as Administrator*; **CENTRAL
PENSION FUND OF THE INTERNATIONAL
UNION OF OPERATING ENGINEERS AND
PARTICIPATING EMPLOYERS**, *by Michael R.
Fanning, as Chief Executive Officer*; and
**INTERNATIONAL UNION OF OPERATING
ENGINEERS, LOCAL UNION NO. 106**, *by
Daniel J. McGraw, as Business Manager*,

Plaintiffs,

**05-CV-1392
(GLS/GJD)**

v.

VK POWER TRANSPORT, LLC, and **DONALD
VICE**, individually and as an Officer of VK
Power Transport, LLC

Defendants.

APPEARANCES:

FOR THE PLAINTIFFS:

Blitman, King Law Firm

Franklin Center
443 North Franklin Street
Suite 300
Syracuse, NY 13204-1415

JENNIFER A. CLARK,
ESQ.

FOR THE DEFENDANTS:

DONALD VICE
Pro Se
7 Christie Lane
Fort Edward, New York 12828

Gary L. Sharpe
U.S. District Judge

Order

This court granted Plaintiffs' motion for judgment by default on June 14, 2006, in an Order which also demanded that Defendants produce their books and records on or before August 1, 2006. Defendants failed to do so, and Plaintiffs subsequently moved for entry of an Order holding Defendants in contempt of this Court pursuant to Rules 37(b)(2) and 70 of the Federal Rules of Civil Procedure and Local Rule 83.5.

On August 15, 2007, this Court ordered Defendants to show cause as to why it should not hold them in contempt and scheduled a hearing on the matter for October 4, 2007. And, the said motion having regularly come on to be heard,

NOW, upon reading and filing the Notice of Motion, dated March 23, 2007, the Affidavit of Jennifer A. Clark, Esq., sworn to the 23rd day of March 2007, and the Affidavit of Joseph W. McCarthy, sworn to the 6th

day of March 2007, all in support of said motion, and upon all of the proceedings hereto had herein, and after hearing Blitman & King LLP, Daniel R. Brice, Esq., attorneys for Plaintiffs, in support of said motion, and after hearing defendant Donald Vice in opposition thereto, and after due deliberation having been had thereon,

NOW, on motion of Blitman & King LLP, Daniel R. Brice, of counsel, attorneys for Plaintiffs, it is

ORDERED, that Plaintiffs' motion is granted in all respects, except insofar as it seeks to have Defendants held in contempt. As Defendants appeared at the October 4th hearing and agreed to comply with this Order, the Court declines to hold them in contempt, and it is further

ORDERED, that Defendants shall pay a fine of \$2,538.12 to Plaintiffs, such monies representing the attorneys' and paralegal fees and costs and disbursements incurred by Plaintiffs in bringing this motion, and enforcing this Court's June 14, 2006 Order, representing \$2,218.30 in attorneys' and paralegal fees through March 20, 2007 and \$319.82 in costs and disbursements through March 20, 2007, and it is further

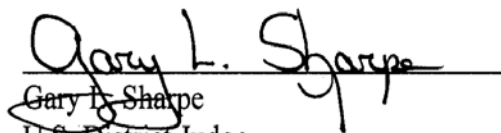
ORDERED, that Defendants VK Power Transport, LLC and Donald Vice shall comply with this Court's June 14, 2006 Order by providing all of the requested records on or before November 7, 2007 for the purposes of an audit; and it is further

ORDERED, the Defendants must pay \$2,538.12 to Plaintiffs, within sixty (60) days after service of a copy of this Order upon them, such monies representing attorneys' fees and paralegal fees and costs and disbursements incurred by Plaintiffs through March 20, 2007 in connection with bringing this motion, and enforcing this Court's June 14, 2006 Order; and it is further

ORDERED, that upon the failure of the Defendants to comply with the provisions of this Order, the Clerk shall, upon receiving written notice of the same from Plaintiffs, enter judgment, in accordance with Rule 54, in favor of the Plaintiffs against Defendants in the amount of \$2,538.12, representing the attorneys' fees and costs incurred through March 20, 2007, by the Plaintiffs in connection with bringing this motion, and enforcing this Court's June 14, 2006 Order, which judgment shall not terminate the action as to Plaintiffs' underlying claims.

IT IS SO ORDERED.

October 25, 2007
Albany, New York



Gary L. Sharpe
U.S. District Judge